

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

HONORABLE STEVE CONDER - SBOT NO. 04656510
Assistant District Attorneys
401 W. Belknap Street
Fort Worth, Texas 76196
Telephone: (817) 884-1400
Facsimile: (817) 212-6973
Attorney(s) for The State of Texas.

HONORABLE RUSSELL JAY REGER -
(APPEARING Pro se)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

August 14, 2006

| | PAGE | VOL. |
|--|------|------|
| Proceedings Begin | 5 | 1 |
| Witnesses sworn and Rule invoked | 6 | 1 |
| Defense Witnesses Direct Cross Voir Dire | | Vol. |
| Noel Portnoy 11 45 | | 1 |
| Pamela Hand 47 | | 1 |
| Arguments by Mr. Reger | 49 | 1 |
| Arguments by Mr. Conder | 62 | 1 |
| Court's ruling | 64 | 1 |
| Proceedings Adjourned | 65 | 1 |
| Reporter's Certificate | 66 | 1 |

ALPHABETICAL INDEX OF WITNESSES

| | Direct | Cross | V.Dire |
|---|--------|-------|--------|
| Hand, Pamela 47 | | | 1 |
| Portnoy, Noel 11 45 | | | 1 |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

Page 4

| | | | | | |
|----|----------------------|------------------------------|---------|----------|------|
| 1 | APPLICANT'S EXHIBITS | | | | |
| 2 | EXHIBIT | DESCRIPTION | OFFERED | ADMITTED | VOL. |
| 3 | 1 | Affidavit of Noel Portnoy | 13 | 13 | 1 |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |
| 7 | | | | | |
| 8 | | | | | |
| 9 | | | | | |
| 10 | | | | | |
| 11 | | | | | |
| 12 | | | | | |
| 13 | | | | | |
| 14 | | | | | |
| 15 | | | | | |
| 16 | | | | | |
| 17 | | | | | |
| 18 | | | | | |
| 19 | | | | | |
| 20 | | | | | |
| 21 | | | | | |
| 22 | | | | | |
| 23 | | | | | |
| 24 | | | | | |
| 25 | | | | | |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

5 (Pages 5 to 8)

| Page 5 | Page 7 |
|--|---|
| <p>1 PROCEEDINGS</p> <p>2 THE COURT: This is trial court cause</p> <p>3 number 0579930D, Court of Appeals Number 2-06-104CR in the</p> <p>4 matter of Russell Jay Reger.</p> <p>5 This hearing is being conducted pursuant to</p> <p>6 an abatement order issued by the Second Court of Appeals</p> <p>7 on July 12th of 2006 which granted appellant's motion to</p> <p>8 abate appeal to trial court and allow filing for</p> <p>9 out-of-time motion for new trial or motion in arrest of</p> <p>10 judgment.</p> <p>11 On July 27th of 2006 the Court granted</p> <p>12 the defendant's motion to refile his motion for new trial,</p> <p>13 which originally was filed June 2nd of 2006, and also</p> <p>14 granted an application for subpoena for Mr. Noel Portnoy</p> <p>15 to be present for purposes of this hearing.</p> <p>16 Mr. Reger, are you ready to proceed?</p> <p>17 MR. REGER: Yes, ma'am. Your Honor, I also</p> <p>18 filed another subpoena application for James K. Walker,</p> <p>19 reconsideration, which the Court received August 3rd,</p> <p>20 and I was wondering if you had time to rule on that yet.</p> <p>21 THE COURT: The Court did receive that.</p> <p>22 The Court is going to deny your motion for reconsideration</p> <p>23 and denies application for subpoena as to Judge James</p> <p>24 Walker for purposes of the DNA motion hearing.</p> <p>25 MR. REGER: Okay, ma'am. I have an</p> | <p>1 live hearing in this court. May the Court take judicial</p> <p>2 notice of the Second District Court's -- Appellate Court's</p> <p>3 July 12 abatement order. While you did order my original</p> <p>4 new trial motion be filed per that order, the Second Court</p> <p>5 of Appeals then ordered that you hold a hearing on all</p> <p>6 four corners of that motion with no exceptions given.</p> <p>7 That motion for new trial is 116 pages</p> <p>8 total. Out of those 116 pages, 100 of them pertain to</p> <p>9 James K. Walker and my issue that the proceeding herein is</p> <p>10 illegal, null and void due to his constitutional</p> <p>11 disqualification.</p> <p>12 It also refers back to nearly the entire</p> <p>13 DNA clerks' records today. In my motion to abate this</p> <p>14 appeal and allow filing of an out-of-time motion for new</p> <p>15 trial and motion in arrest of judgment, I informed the</p> <p>16 Second Court of Appeals that the issue of my void judgment</p> <p>17 would be at issue in this motion for new trial hearing.</p> <p>18 The Second Court of Appeals granted that</p> <p>19 motion in full. On June 26, 2006 Ms. Nancy Gilliland</p> <p>20 filed a supplemental record with the Second Court of</p> <p>21 Appeals which had my motion for new trial within it, so</p> <p>22 that the Second Court of Appeals saw that motion before</p> <p>23 making its July 12th ruling yet it noted no exception to</p> <p>24 just addressing matters solely under Chapter 64.</p> <p>25 I'd also filed a first amended notice of</p> |
| Page 6 | Page 8 |
| <p>1 objection that I would need to read into the record on</p> <p>2 that if you want me to do it now or at the end.</p> <p>3 MR. CONDER: Before we proceed, the State</p> <p>4 would like to invoke the rule in this case.</p> <p>5 THE COURT: All right. If anybody who is</p> <p>6 present as a witness will stand up, please, and be sworn.</p> <p>7 (Witnesses sworn)</p> <p>8 THE COURT: Okay. If you will state your</p> <p>9 name first, please, sir.</p> <p>10 THE WITNESS: My name is Noel Portnoy.</p> <p>11 THE COURT: And you, ma'am?</p> <p>12 THE WITNESS: Pamela Keller Hand.</p> <p>13 THE COURT: Both of you have been sworn as</p> <p>14 witnesses, which means that you are not allowed to remain</p> <p>15 in the courtroom while anyone is testifying and you will</p> <p>16 have to wait out in the hall. Don't discuss your</p> <p>17 testimony with anybody until after the case is concluded,</p> <p>18 okay.</p> <p>19 Go ahead, Mr. Reger.</p> <p>20 MR. REGER: Do I remain seated here, ma'am?</p> <p>21 THE COURT: That's fine.</p> <p>22 MR. REGER: Your Honor, with all due</p> <p>23 respect, I adamantly object, under Trap 33.1, James K.</p> <p>24 Walker not being here today, even after I three times</p> <p>25 requested subpoena to be issued for his presence during a</p> | <p>1 appeal to the Second Court of Appeals on July the 6th of</p> <p>2 2006 seeking jurisdiction to appeal my legal, null and</p> <p>3 void conviction in this case as well. No attorney</p> <p>4 representing the State has opposed the issue of my</p> <p>5 illegal, null and void judgment being addressed in this</p> <p>6 direct collateral proceeding, nor my amended notice of</p> <p>7 appeal has been objected to either.</p> <p>8 There's no order from the Second Court of</p> <p>9 Appeals stating that the issue cannot be the addressed in</p> <p>10 this hearing.</p> <p>11 I have established prima facie case that</p> <p>12 James K. Walker did not file his Constitutional</p> <p>13 qualifications before presiding over my original trial.</p> <p>14 He also admitted to Pam Hand on the phone that he had not</p> <p>15 executed, taken, nor filed his constitutional oath before</p> <p>16 presiding over my original trial.</p> <p>17 The evidence trail now boils down to James</p> <p>18 K. Walker's answers to be given up under oath and on this</p> <p>19 record. If distance was a factor, this Court could have</p> <p>20 well ordered his appearance by telephonic means. I am</p> <p>21 trying to adduce facts not on record, and I object to this</p> <p>22 violation of my due process rights and to this most</p> <p>23 honorable Court's failure to fully follow the Second Court</p> <p>24 of Appeals July 12th, 2006 abatement order in full, ma'am,</p> <p>25 and that's it.</p> |

| Page 9 | Page 11 |
|--|--|
| <p>1 THE COURT: Thank you.</p> <p>2 MR. CONDER: Your Honor, would you like the</p> <p>3 State to respond?</p> <p>4 THE COURT: Sure.</p> <p>5 MR. CONDER: Your Honor, neither this Court</p> <p>6 nor the Court of Appeals has jurisdiction to consider a</p> <p>7 claim as to whether the original conviction was void.</p> <p>8 This current Court's jurisdiction is invoked by the</p> <p>9 defendant filing a motion for postconviction DNA testing</p> <p>10 under Chapter 64 of the Code of Criminal Procedure.</p> <p>11 The State of Texas does not authorize</p> <p>12 courts to have continuing jurisdiction in criminal cases.</p> <p>13 Once a conviction is final it can only be invoked in two</p> <p>14 manners, an Article 11.07 writ of habeas corpus and a</p> <p>15 Chapter 64 request for motion for DNA testing. Article</p> <p>16 11.07 places the final decision-making process for all of</p> <p>17 these exclusively with the Court of Criminal Appeals.</p> <p>18 Mr. Reger has not filed an Article 11.07</p> <p>19 motion for writ of habeas corpus raising these</p> <p>20 jurisdictional issues. If he chooses to litigate those,</p> <p>21 he has to follow the appropriate steps. The Court of</p> <p>22 Appeals would have no jurisdiction to consider whether the</p> <p>23 original conviction was void.</p> <p>24 THE COURT: It's my understanding that we</p> <p>25 are here under a Chapter 64 proceeding. If I'm wrong</p> | <p>1 THE COURT: Okay.</p> <p>2 MR. REGER: Does the clerk have a spare</p> <p>3 copy of this that he could look through up there, the</p> <p>4 clerk's record on the DNA and supplemental, or do you want</p> <p>5 me to have him just take that up there?</p> <p>6 THE COURT: That'll be great.</p> <p>7 (Witness sworn)</p> <p>8 NOEL PORTNOY,</p> <p>9 having been first duly sworn, testified as follows:</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MR. REGER:</p> <p>12 Q. Can you state your full name and bar card for</p> <p>13 the record.</p> <p>14 A. Noel Portnoy, Bar card number 16162000.</p> <p>15 Q. Do you recall that my mother, Gaynelle Garner,</p> <p>16 had initially retained you to advise me of my rights in</p> <p>17 this case in April of 1995?</p> <p>18 A. As far as my recollection is concerned, I don't</p> <p>19 recall her hiring me. I was hired, but I don't remember</p> <p>20 that it was her that hired me.</p> <p>21 Q. I believe I retained you later on.</p> <p>22 A. Yes, I remember your payments.</p> <p>23 Q. In that representation did you prepare an</p> <p>24 attorney/client file?</p> <p>25 A. Yes, I did.</p> |
| Page 10 | Page 12 |
| <p>1 about the Court of Appeals order, I'm sure they will let</p> <p>2 me know, but that's what we are going to be here</p> <p>3 addressing today.</p> <p>4 MR. REGER: I have two cases here that I</p> <p>5 was going to show you. One of them is Ex Parte Seidel</p> <p>6 from the Court of Criminal Appeals in 2001. The next one</p> <p>7 is Ex Parte Spaulding regarding a void judgment issue.</p> <p>8 The State's calling this a final conviction</p> <p>9 and I am saying that it was void from the very beginning,</p> <p>10 and this issue can be addressed at any time, along with my</p> <p>11 Chapter 64 issues that I plan on raising here, too, ma'am.</p> <p>12 THE COURT: If you will just give me the</p> <p>13 cites for those I can pull them up on my computer.</p> <p>14 MR. REGER: The Spaulding case is at 687</p> <p>15 SW2d at 741, and the Seidel case is 39 SW3d at 221. And</p> <p>16 my emphasis is on page 745 of the Spaulding case and page</p> <p>17 225 of the Seidel case.</p> <p>18 THE COURT: All right, Mr. Reger. Both of</p> <p>19 the cases that you cite are habeas corpus proceedings. I</p> <p>20 disagree with your interpretation of those and I will deny</p> <p>21 your request to have the subpoena application granted as</p> <p>22 to Judge Walker. But you may proceed on your motion as it</p> <p>23 relates to the Chapter 64 proceeding.</p> <p>24 MR. REGER: All right. I guess I will call</p> <p>25 Noel Portnoy to be my first witness.</p> | <p>1 Q. Did you bring that today?</p> <p>2 A. Yes, this is the original file.</p> <p>3 Q. That's the entire file?</p> <p>4 A. The entire file.</p> <p>5 Q. Have you recently reviewed that file?</p> <p>6 A. No, I have not.</p> <p>7 Q. So you are not familiar with its contents right</p> <p>8 now?</p> <p>9 A. I am familiar with its contents.</p> <p>10 Q. Do you recall preparing an affidavit in this</p> <p>11 court on August the 6th of 1998 during a habeas corpus</p> <p>12 proceeding?</p> <p>13 A. I remember, yes, preparing that affidavit.</p> <p>14 Q. Do you have that with you today?</p> <p>15 A. I don't believe it's in this file. It's not</p> <p>16 part of the attorney/client relationship file but if it's</p> <p>17 not in this file, it's one of the two boxes in my car.</p> <p>18 Q. Can I provide a copy of this? It's already been</p> <p>19 filed in this case. I show a filestamp from the clerk</p> <p>20 here.</p> <p>21 A. May I respond? I do have a copy of that</p> <p>22 affidavit in his file.</p> <p>23 THE COURT: Okay. Well, he needs his back</p> <p>24 probably.</p> <p>25 A. Actually it's a working draft with writing on it</p> |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

7 (Pages 13 to 16)

| Page 13 | Page 15 |
|---|--|
| <p>1 so it's not the final copy.</p> <p>2 Q. Have you reviewed that affidavit?</p> <p>3 THE COURT: Hold on. Let me get the one</p> <p>4 that you have, the file-marked copy, copied and brought</p> <p>5 back so everybody has the same document.</p> <p>6 Mr. Reger, you may have this marked as</p> <p>7 Applicant's Exhibit 1.</p> <p>8 Any objections?</p> <p>9 MR. CONDER: No objections.</p> <p>10 (Applicant's Exhibit 1 marked and admitted)</p> <p>11 THE COURT: Applicant's Exhibit Number 1 is</p> <p>12 admitted.</p> <p>13 MR. REGER: Proceed, Your Honor?</p> <p>14 THE COURT: Yes.</p> <p>15 BY MR. REGER:</p> <p>16 Q. You are reading that right now, Mr. Portnoy?</p> <p>17 A. Yes, I am.</p> <p>18 Q. I'll give you a moment to read that.</p> <p>19 A. I've read it.</p> <p>20 Q. On pages one through three of that affidavit,</p> <p>21 did you detail and swear your thorough pretrial</p> <p>22 investigation to Ms. Collum?</p> <p>23 A. I did.</p> <p>24 Q. On page four, lines six through eight, did you</p> <p>25 not also swear to the Court that you did not request a</p> | <p>1 A. Yes.</p> <p>2 Q. Do you have that copy with you?</p> <p>3 A. I believe I do. Yes.</p> <p>4 Well, I haven't seen that particular</p> <p>5 motion. I have my motions here.</p> <p>6 Q. You should have a motion for discovery --</p> <p>7 A. I'm sure it's in here.</p> <p>8 Q. -- and a motion for production and inspection.</p> <p>9 A. Yes.</p> <p>10 Q. Page one of that motion for discovery, did you</p> <p>11 not request items in the possession, custody or control of</p> <p>12 the State by and through its agents, the police or the</p> <p>13 DA's office, which were material to the guilt or innocence</p> <p>14 and punishment phase of my defense?</p> <p>15 A. Yes, in items A and C.</p> <p>16 Q. Okay. And on page three of that motion did you</p> <p>17 not also request the criminal history or felony</p> <p>18 convictions or misdemeanor convictions involving moral</p> <p>19 turpitude of each witness which the State intended to call</p> <p>20 at my trial?</p> <p>21 A. I did ask for that.</p> <p>22 Q. In your motion for production and inspection of</p> <p>23 the evidence and information which may lead to evidence,</p> <p>24 you filed that, did you not?</p> <p>25 A. Yes.</p> |
| Page 14 | Page 16 |
| <p>1 pretrial evidentiary hearing because the State had</p> <p>2 complied with all of your evidentiary requests; there was</p> <p>3 no dispute as to your pretrial motions, and the State had</p> <p>4 provided you with the entire contents of their file other</p> <p>5 than their work product?</p> <p>6 A. That's true.</p> <p>7 Q. You still today stand by that affirmation?</p> <p>8 A. That's my recollection.</p> <p>9 Q. In this case did the Tarrant County District</p> <p>10 Attorney's office also allow you to make copies of their</p> <p>11 open file?</p> <p>12 A. Yes, they did.</p> <p>13 Q. Did you not also make myself a full copy of your</p> <p>14 copy that you made?</p> <p>15 A. Yes.</p> <p>16 Q. Do you also remember providing me with</p> <p>17 everything you possessed during discovery in cause number</p> <p>18 17/18894/99, Reger versus Portnoy?</p> <p>19 A. Yes.</p> <p>20 Q. Did you not file a motion for discovery in this</p> <p>21 case, which is in the trial clerk's record, the original</p> <p>22 record, at pages 21 through 28?</p> <p>23 A. I don't know what pages they are, but I filed a</p> <p>24 motion for discovery.</p> <p>25 Q. You did file a motion for discovery?</p> | <p>1 Q. Just for the record, that's located at pages 31</p> <p>2 through 34 of the original clerk's record. You have a</p> <p>3 copy of that with you?</p> <p>4 A. Yes.</p> <p>5 Q. All right. So you agree through those two</p> <p>6 motions and what you remember in my defense that we were</p> <p>7 looking to find impeachment evidence on Christina and</p> <p>8 Vicki Storey within those discovery motions?</p> <p>9 A. Yes.</p> <p>10 Q. And we were all looking for information on</p> <p>11 William Matthew Storey, the deceased in this proceeding?</p> <p>12 A. Of course, he wasn't going to be a witness, but</p> <p>13 if we had evidence that he was the aggressor in this case,</p> <p>14 in my opinion, that was included in my request.</p> <p>15 Q. That was our defense was to try to prove William</p> <p>16 Matthew Storey was the aggressor here and I was the</p> <p>17 defendant?</p> <p>18 A. Yes.</p> <p>19 Q. That was the identity issue that we were trying</p> <p>20 to establish to my jury?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall in your records whether or not the</p> <p>23 State ever made us aware that Christina Storey had pled</p> <p>24 guilty to Class A misdemeanor assault with bodily injury</p> <p>25 on March 29th of 1995? That was in Tarrant County cause</p> |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

8 (Pages 17 to 20)

| Page 17 | Page 19 |
|--|--|
| <p>1 number 0562865.</p> <p>2 A. I have no recollection one way or the other.</p> <p>3 Q. Can you -- from your records, I mean...</p> <p>4 A. It was not in the discovery I obtained. I don't</p> <p>5 remember. I believe it was Mr. Rabalais was the</p> <p>6 prosecutor. I don't remember. I don't have any</p> <p>7 recollection. I may have and I don't remember.</p> <p>8 I mean, I don't recall cross-examining her</p> <p>9 --</p> <p>10 Q. You did.</p> <p>11 A. -- I mean, with the conviction.</p> <p>12 Q. Okay. Would you agree that that final</p> <p>13 conviction would have amounted to a crime involving moral</p> <p>14 turpitude that you could have impeached her with?</p> <p>15 A. I don't recall what the conviction was for.</p> <p>16 Q. It was for a Class A misdemeanor, assault with</p> <p>17 bodily injury.</p> <p>18 A. I'm not sure that assault with bodily injury is</p> <p>19 a conviction involving moral turpitude.</p> <p>20 Q. If I told you that there is two published cases</p> <p>21 out of the Austin Court of Appeals on that --</p> <p>22 A. I would not dispute that.</p> <p>23 Q. Had you known of that fact, would you have</p> <p>24 brought that to my jury's attention? Would you have moved</p> <p>25 to impeach her?</p> | <p>1 MR. REGER: At this point, ma'am, I need to</p> <p>2 have him refer to these.</p> <p>3 BY MR. REGER:</p> <p>4 Q. If you will look at pages 34 through 71 on that</p> <p>5 clerk's record. There is a copy of that report.</p> <p>6 A. I've had a chance to review it.</p> <p>7 Q. Do you recall at any time ever seeing that</p> <p>8 report in any of the State's cases or being afforded with</p> <p>9 that?</p> <p>10 A. I would have to look at my file. I see in my</p> <p>11 file a probation for driving while intoxicated for Matthew</p> <p>12 Storey.</p> <p>13 Q. You should have the indictments on that, is that</p> <p>14 correct, copies of the indictments?</p> <p>15 A. With respect to Matthew Storey?</p> <p>16 Q. Yes.</p> <p>17 A. No, I don't have a copy of an indictment on</p> <p>18 Matthew Storey. I have a DWI driving record and a report</p> <p>19 that he received probation on April 3rd, 1995. No,</p> <p>20 that's the time of the report. 1988 -- the arrest was</p> <p>21 1988.</p> <p>22 Q. Through that report that I just showed you, had</p> <p>23 you ever at any time known that he had been arrested for</p> <p>24 not only a DWI but he also was found with two pairs of</p> <p>25 numchucks up underneath the front seat of his car?</p> |
| Page 18 | Page 20 |
| <p>1 MR. CONDER: Your Honor, I'm going to</p> <p>2 object. I don't see how this goes to the issues of 64.03</p> <p>3 as to how he meets the requirements for DNA testing.</p> <p>4 THE COURT: Sustained.</p> <p>5 MR. REGER: Can I comment on that, Your</p> <p>6 Honor?</p> <p>7 THE COURT: Sure.</p> <p>8 MR. REGER: It goes towards identity</p> <p>9 factors on credibility issues in the order on deciding the</p> <p>10 identity issue that I was trying to present at my trial.</p> <p>11 This is totally going towards impeachment value towards</p> <p>12 that witness, which was the State's sole witness in that</p> <p>13 proceeding. That's what I am trying to establish on the</p> <p>14 for the Second Court of Appeals, that she was thoroughly</p> <p>15 impeached.</p> <p>16 THE COURT: I'm going to sustain the</p> <p>17 State's objection as to the last question.</p> <p>18 BY MR. REGER:</p> <p>19 Q. Before my trial did the State afford with you a</p> <p>20 true copy of Arlington Police Report 910155968 regarding</p> <p>21 the arrest and conviction of William Matthew Storey for</p> <p>22 the offense of a DWI and unlawfully carrying deadly</p> <p>23 weapons?</p> <p>24 A. I don't recall if they did or didn't.</p> <p>25 Q. I have that.</p> | <p>1 MR. CONDER: Your Honor, I'm going to</p> <p>2 object again to the relevance of this line of questioning.</p> <p>3 It doesn't -- it's an attack on the credibility of the</p> <p>4 State's witnesses. It doesn't go to whether identity was</p> <p>5 an issue in this case. It only goes to -- it's a</p> <p>6 challenge to the credibility of a self-defense claim.</p> <p>7 THE COURT: Which I think Mr. Reger's point</p> <p>8 is that if he is able to show that his self-defense claim</p> <p>9 was credible that that puts identity in issue.</p> <p>10 MR. REGER: Yes, ma'am.</p> <p>11 THE COURT: So I will let him complete this</p> <p>12 line of questioning.</p> <p>13 MR. REGER: Thank you, Your Honor.</p> <p>14 A. If he had a prior conviction for unlawfully</p> <p>15 carrying of a weapon, I would have, and if I had known</p> <p>16 that or if I knew it, I should have at least offered it</p> <p>17 possibly outside the presence of the jury and gotten a</p> <p>18 ruling from Judge Walker.</p> <p>19 BY MR. REGER:</p> <p>20 Q. Thank you. That's what I was looking for.</p> <p>21 A. I don't see that in the records that I was</p> <p>22 provided.</p> <p>23 Q. Moving along, I will go to the next one. Do you</p> <p>24 recall the fight between Matt Storey and Michael Furrh</p> <p>25 which occurred on August 20th, 1994, in the Sleepy Hollow</p> |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

9 (Pages 21 to 24)

| Page 21 | Page 23 |
|--|--|
| <p>1 Apartments?</p> <p>2 A. I remember there was a fight in the parking lot.</p> <p>3 MR. CONDER: Your Honor, I'm going to</p> <p>4 object again to the relevance that this matter is not</p> <p>5 relevant to the identity issue in the actual killing of</p> <p>6 Matthew Storey.</p> <p>7 THE COURT: Overruled.</p> <p>8 MR. REGER: Thank you, Your Honor.</p> <p>9 BY MR. REGER:</p> <p>10 Q. Did the State afford you a true and correct copy</p> <p>11 of Arlington Police Report 940125500 or 9401254475?</p> <p>12 A. Not that I am aware of.</p> <p>13 Q. Those are located in the clerk's record at</p> <p>14 pages 72 through 81.</p> <p>15 A. I don't recall seeing that, but I would have to</p> <p>16 review the file thoroughly. I don't recall seeing that in</p> <p>17 any records provided me in discovery. If I could</p> <p>18 elaborate, my recollection is that I've given you, through</p> <p>19 various proceedings, a copy of the entire contents of my</p> <p>20 file.</p> <p>21 Q. You will stipulate to that, everything I have,</p> <p>22 you have, that you've given me a copy of --</p> <p>23 A. Everything in my trial file you have.</p> <p>24 Q. Okay. But as far as those reports that I just</p> <p>25 mentioned --</p> | <p>1 A. I'm sorry, you are asking me if I have a copy of</p> <p>2 a report of an interview of Michael Furrh regarding the</p> <p>3 fight?</p> <p>4 Q. Yes. That's in my clerk's record over there. I</p> <p>5 am wanting you just to focus on pages 82 and 91 of that</p> <p>6 clerk's record, if that can refresh your memory.</p> <p>7 A. No. I have an interview with Vicki Storey but</p> <p>8 not with Michael Furrh.</p> <p>9 Q. In that interview record I am pointing you to in</p> <p>10 the clerk's record, specifically pages 82 and 91, do you</p> <p>11 see where Michael Furrh was admitting to Officer Jerry</p> <p>12 Vennum that he had been assaulted by a Matthew Storey?</p> <p>13 MR. CONDER: Your Honor, I'm going to again</p> <p>14 object on hearsay and relevance grounds to how it was not</p> <p>15 related to how the defendant shot Matthew Storey.</p> <p>16 THE COURT: Overruled.</p> <p>17 A. I see that on pages 82 and 83. The first time</p> <p>18 I've seen it that I can recollect.</p> <p>19 BY MR. REGER:</p> <p>20 Q. On -- I believe it is at Page 91 of that clerk's</p> <p>21 record, which would be page ten on that report, do you see</p> <p>22 where Michael Furrh admitted that he had called Matt</p> <p>23 Storey four to five weeks before April 2nd of 1995 and</p> <p>24 had set Matt Storey against me?</p> <p>25 Should be the third paragraph down.</p> |
| Page 22 | Page 24 |
| <p>1 A. I haven't seen --</p> <p>2 Q. You've never seen --</p> <p>3 A. I don't recall those.</p> <p>4 THE COURT: One person at a time.</p> <p>5 BY MR. REGER:</p> <p>6 Q. Now, within your sworn affidavit in the habeas</p> <p>7 proceeding you said that you decided not to call Michael</p> <p>8 Furrh because you felt he was a hostile witness toward the</p> <p>9 defendant?</p> <p>10 A. Yes.</p> <p>11 Q. And in those police reports that I just pointed</p> <p>12 out to you, you were never made aware that Brenda Furrh,</p> <p>13 which was Michael Furrh's mother, had also been present</p> <p>14 during that fight and she could have been called as a</p> <p>15 witness?</p> <p>16 A. I wasn't aware of it.</p> <p>17 Q. You were not aware of it?</p> <p>18 A. Well, I have no recollection one way or another</p> <p>19 that I knew that Brenda Furrh was a witness to the fight.</p> <p>20 Q. Okay. I'll try to speed this up, Your Honor. I</p> <p>21 will go to the next thing.</p> <p>22 Do you have a copy of Mr. Furrh's interview</p> <p>23 with Dalworthington Gardens' Lieutenant Jerry S. Vennum</p> <p>24 and Catherine R.L. Parson in the file? If not, I have a</p> <p>25 copy of it in the clerk's record at pages 82 through 96.</p> | <p>1 A. I am reading it for the first time. I don't</p> <p>2 necessarily characterize it as setting off anyone against</p> <p>3 you, but it says what it says.</p> <p>4 Q. Do you remember me testifying at trial that Matt</p> <p>5 Storey, at one point about -- approximately three weeks</p> <p>6 before that occurrence, that he had mentioned that phone</p> <p>7 call from Mr. Furrh?</p> <p>8 A. I can't recall. I have never read the statement</p> <p>9 of facts for the trial.</p> <p>10 Q. Just for the record, that's Reporter's Record,</p> <p>11 Volume 5, at page 340.</p> <p>12 In that same page that you just read right</p> <p>13 there, do you see where Michael Furrh had talked about</p> <p>14 Matt's mother, Dora Storey, and Brenda Furrh, which was</p> <p>15 Michael Furrh's mother, also being on the phone when he</p> <p>16 had made that phone call to William Matthew Storey?</p> <p>17 A. I see that Matt's mom is on the other end of the</p> <p>18 phone listening in, according to what Michael Furrh's</p> <p>19 telling the officer.</p> <p>20 Q. Do you ever recall cross-examining Dora's story</p> <p>21 as to that phone call during my trial?</p> <p>22 A. Dora's?</p> <p>23 Q. Yes.</p> <p>24 A. I cannot recall the particulars of that</p> <p>25 cross-examination.</p> |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

10 (Pages 25 to 28)

Page 25

1 Q. Did the State afford you with a true copy of
2 Pantego Police Report 94015895? That is regarding the
3 arrest of William Matthew Storey regarding the assault
4 bodily injury of Christina Renae Ragland Storey? That
5 would be at pages 370 through 377 of that clerk's record.

6 MR. CONDER: The State would again
7 reiterate its objection to relevance in this matter.

8 THE COURT: Overruled.

9 A. I don't recall seeing that. I am looking at the
10 record you are referring to. I don't recall seeing it
11 before. I don't see it in the file that I have.

12 BY MR. REGER:

13 Q. Would you turn back to page 355 on that clerk's
14 record. That was your examination during trial of
15 Christina Storey, which is at Reporter's Record, Volume 6,
16 pages 277 through 280.

17 Could you refresh your memory with that
18 testimony?

19 A. I see that. I did cross-examine her.

20 Q. On that particular offense?

21 A. Yes.

22 Q. And do you recall on that testimony that she
23 testified under penalty of perjury that Matt Storey had
24 never laid a hand on her during that October 8th, '94
25 assault?

Page 27

1 A. Yes, she states -- signed a statement from
2 Matt's lawyer saying that, "he did not abuse me or hurt me
3 physically."

4 Q. She was specifically talking about the October
5 8th, 1994, assault? That's what you were examining her
6 on, and I believe you showed her a copy of indictment that
7 you had in your files at the time.

8 A. Yes. I believe that would have been probably in
9 the information.

10 Q. Would that constitute impeachment evidence
11 against Christina had you had that report in your
12 possession?

13 A. Yes, and particularly the photographs.

14 Q. From these photographs, what you're seeing right
15 here, do you see that as playful or unintended?

16 A. No.

17 MR. CONDER: Objection. He hasn't
18 established Mr. Portnoy's medical qualifications to
19 determine whether that is evidence of playful injuries.

20 THE COURT: Sustained.

21 MR. REGER: May I comment on that?

22 THE COURT: Sure.

23 MR. REGER: I have a report from a United
24 States Magistrate Judge right down the street during my
25 federal habeas proceeding. From the record, from a

Page 26

1 A. That's what she testified to, that Matthew did
2 not hurt her.

3 Q. Did the police ever afford you with a copy of
4 this photograph here, Mr. Portnoy, of her injuries? That
5 goes with that police report there.

6 A. I don't recall. I have a separate file for the
7 photos.

8 No, I did not receive that, but I can tell,
9 based on reviewing of the file, that I had in front of me
10 a copy of those photos, but I can't say I have an
11 independent recollection of it.

12 MR. REGER: Your Honor, may I pass this to
13 him?

14 THE COURT: Yes.

15 BY MR. REGER:

16 Q. After reviewing the testimony on the trial
17 record that that she stated that Matthew never laid a
18 single hand on her, do you also recall in that same
19 testimony that she said that she gave another affidavit
20 swearing under penalty of perjury to Matthew's lawyers
21 denying that assault?

22 A. Are you asking me if she testified to that in
23 this testimony here?

24 Q. Yes. Do you recollect her telling me that under
25 oath?

Page 28

1 disinterested jurist, when he read the record, that was
2 what his account of what my jury saw without having these
3 reports and records, that he concluded that it was
4 unintentional and playful acts by the deceased in this
5 case.

6 That's the only thing that I was trying to
7 point out on the record is from my ex-attorney's
8 perspective, that him now seeing this evidence on record,
9 does he believe in his opinion that it's unintentional or
10 playful acts. That's all I was going to prove up.

11 THE COURT: I still sustain the State's
12 objection.

13 MR. REGER: Okay. Thank you.

14 BY MR. REGER:

15 Q. In that Pantego Police Report that we were just
16 reading, do you see -- that is going to be at page 371 or
17 372 where the handwritten accounts are. Do you see where
18 Christina Storey described Matthew Storey as being very
19 intoxicated, acting very hostile and very upset when he
20 assaulted her just because he -- or she had mentioned her
21 ex-boyfriend's name?

22 A. It states that the suspect had been drinking and
23 was very hostile.

24 MR. CONDER: Your Honor, I object as
25 hearsay.

| Page 29 | Page 31 |
|---|---|
| <p>1 THE COURT: Overruled.</p> <p>2 A. The reporting person stated that the suspect had</p> <p>3 been drinking and was very hostile.</p> <p>4 BY MR. REGER:</p> <p>5 Q. Do you see where that occurs because he was</p> <p>6 feeding her dogs at that time and she had asked him to</p> <p>7 stop?</p> <p>8 A. The dogs were fighting in the house and he was</p> <p>9 mad at the dogs, told the suspect not to beat the dogs,</p> <p>10 since that's what her ex-boyfriend Jeffrey had done.</p> <p>11 Q. And then he grabbed her by the throat?</p> <p>12 A. It states, "The suspect grabbed the reporting</p> <p>13 person by the throat and pushed her down onto the couch;</p> <p>14 struck suspect in the face; pushed her over a stereo</p> <p>15 speaker causing it to scratch her left leg on her calf."</p> <p>16 Q. And then going to page 374 of that, she also</p> <p>17 recounted that to Detective Sandra Blackney with the</p> <p>18 Pantego Police Department two days later, did she not?</p> <p>19 A. Yes. She doesn't recount it as being that</p> <p>20 severe at that time.</p> <p>21 Q. In your opinion, from what you remember from</p> <p>22 this trial record, does that corroborate my trial</p> <p>23 testimony regarding Matt's hostile, intoxicated and</p> <p>24 assaultive nature?</p> <p>25 A. Yes, it does.</p> | <p>1 available to my jury?</p> <p>2 MR. CONDER: Objection, speculation. He</p> <p>3 has not seen the report; he doesn't know whether he would.</p> <p>4 THE COURT: Overruled.</p> <p>5 A. If I had evidence to impeach her testimony, I</p> <p>6 would have offered it.</p> <p>7 BY MR. REGER:</p> <p>8 Q. That's what I am getting to next. In that</p> <p>9 police report right there, that police officer makes a</p> <p>10 summary on there that he felt that Vicki Storey was making</p> <p>11 up a lot of her testimony in that report in retaliation to</p> <p>12 the custody issue between her and Matthew Storey.</p> <p>13 A. Is that a question?</p> <p>14 Q. Yes. Do you see that?</p> <p>15 A. On 382, it states in the officer's report, "It</p> <p>16 is noted as well the timing of this report comes after a</p> <p>17 restraining order was placed on Vicki Barnett. It is also</p> <p>18 noted that there is a pending divorce and custody battle</p> <p>19 for the child."</p> <p>20 Q. Would you have used that information in there?</p> <p>21 There is more on the summary on that that talks about her</p> <p>22 making a -- the officer felt that she was making a</p> <p>23 retaliatory report in there. You had not seen that in</p> <p>24 there yet?</p> <p>25 A. Not retaliatory. I have not seen retaliatory</p> |
| Page 30 | Page 32 |
| <p>1 Q. You would have used that to my jury?</p> <p>2 A. Yes, I would have.</p> <p>3 Q. Thank you. Did the State afford you with a true</p> <p>4 copy of Pantego Police Department 94013369 and 94013485</p> <p>5 regarding the assault of Vicki Storey by Matthew Storey</p> <p>6 which occurred on August 25th of 1994?</p> <p>7 MR. CONDER: Objection, relevance.</p> <p>8 THE COURT: Overruled.</p> <p>9 A. No, they did not.</p> <p>10 BY MR. REGER:</p> <p>11 Q. That's a DNA record at page 379 through 386.</p> <p>12 A. No, 379 through what?</p> <p>13 Q. 379 through 386.</p> <p>14 A. No.</p> <p>15 Q. You've never seen those before?</p> <p>16 A. I have not</p> <p>17 Q. Have you read the description of what occurred</p> <p>18 on that day from the very front cover?</p> <p>19 MR. CONDER: Objection. The witness stated</p> <p>20 he has not seen that before. He does not have any</p> <p>21 firsthand knowledge of this information.</p> <p>22 THE COURT: Sustained.</p> <p>23 BY MR. REGER:</p> <p>24 Q. As far as that report goes, if you would have</p> <p>25 known about that, would you have made that information</p> | <p>1 yet.</p> <p>2 Q. It might be towards the front. If that states</p> <p>3 that in that report, would you have used that to impeach</p> <p>4 Vicki Storey's testimony?</p> <p>5 A. I don't see how I could use the allegation that</p> <p>6 she was making it up to impeach her testimony. I mean, if</p> <p>7 the issue is aggressiveness by the deceased, my thought</p> <p>8 would be to focus on that issue and not to go down, you</p> <p>9 know, who is at fault in some custody proceeding.</p> <p>10 I would want to show that Matthew was the</p> <p>11 aggressor in the incident, and if by impeaching Vicki's</p> <p>12 story by his assault upon her through other witnesses to</p> <p>13 impeach her testimony, which the judge did allow me to</p> <p>14 question her, then I would have focused on that issue.</p> <p>15 Now, I don't know that I would have then</p> <p>16 said, well, maybe she is making this up because -- if the</p> <p>17 prosecutor can do that then -- if the Judge let the</p> <p>18 prosecutor do it over my objection. I don't think I would</p> <p>19 have gone that far, but sitting here just trying to make a</p> <p>20 judgment call as to --</p> <p>21 Q. I understand and I --</p> <p>22 A. -- how I would have handled a situation in a</p> <p>23 courtroom years and years ago.</p> <p>24 Q. My focus was primarily on the fact that we had</p> <p>25 offered defense witnesses that testified things that Vicki</p> |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

12 (Pages 33 to 36)

| Page 33 | Page 35 |
|--|--|
| <p>1 had told me and had told my mother and had told Pamela</p> <p>2 Hand about the assaultive nature of William Matthew Storey</p> <p>3 which she got up on the stand and later denied, and that's</p> <p>4 where the impeachment value -- I am asking, would have</p> <p>5 that come into play if you had used it at that point?</p> <p>6 A. If I could impeached her testimony on that</p> <p>7 issue, yes.</p> <p>8 Q. To show that she was not a credible witness?</p> <p>9 That's all I wanted to get to. Thank you.</p> <p>10 A. Not that she was not a credible witness, but</p> <p>11 that impeaching that point that on that particular</p> <p>12 occasion Matthew was the aggressor, that was what I was</p> <p>13 focussed on.</p> <p>14 Q. In that particular report there she described</p> <p>15 William Matthew Storey was picking her up by her side and</p> <p>16 putting her over his head and then slamming her to the</p> <p>17 hard ground and then sitting on top of her until the</p> <p>18 police arrived?</p> <p>19 A. If that is what she says, then...</p> <p>20 Q. That's what's narrated in the report.</p> <p>21 A. I wish I knew that report was made to a police</p> <p>22 officer.</p> <p>23 Q. But you had never seen that before?</p> <p>24 A. I did not see that.</p> <p>25 Q. Thank you, sir.</p> | <p>1 was filed in the district clerk's file.</p> <p>2 MR. REGER: So there's already been another</p> <p>3 subsequent record made on that with that pleading in it?</p> <p>4 THE COURT: It will be added as part of the</p> <p>5 supplemental record, I think, that goes with this hearing</p> <p>6 but I will show the witness the affidavit that you wanted</p> <p>7 directed.</p> <p>8 MR. REGER: Thank you, Your Honor.</p> <p>9 BY MR. REGER:</p> <p>10 Q. There should be some other lines I wanted to</p> <p>11 address.</p> <p>12 A. I have never seen that before.</p> <p>13 Q. Do you see where Arlington Police Department,</p> <p>14 Officer Jay McSpadden, heard Michael Storey threaten</p> <p>15 Michael Furrh's life over the phone while he was at Vicki</p> <p>16 Storey's residence on that date?</p> <p>17 MR. CONDER: Objection, relevance.</p> <p>18 THE COURT: Reask that.</p> <p>19 BY MR. REGER:</p> <p>20 Q. I would ask if Officer Jay McSpadden, while he</p> <p>21 was over at Vicki Storey's residence on July 22nd of</p> <p>22 1994, heard William Matthew Storey threatened Michael</p> <p>23 Furrh's life over the phone.</p> <p>24 MR. CONDER: I also object on hearsay</p> <p>25 grounds and relevance.</p> |
| Page 34 | Page 36 |
| <p>1 Going on, did the State afford you with a</p> <p>2 copy of Arlington Police Report 940105084 regarding the</p> <p>3 assault of Vicki Storey and Michael Furrh by Matt Storey</p> <p>4 that occurred on July 22nd, 1994?</p> <p>5 MR. CONDER: The State would again argue</p> <p>6 that this is not relevant to the identity of the shooter</p> <p>7 April 2nd, 1995.</p> <p>8 THE COURT: Overruled.</p> <p>9 A. Could you direct me to those pages again?</p> <p>10 BY MR. REGER:</p> <p>11 Q. That report would be --</p> <p>12 MR. REGER: I've got that this is a part of</p> <p>13 a report that has not been filed into the record yet. I</p> <p>14 filed two separate requests to have this specifically put</p> <p>15 into a supplemental record, and I've had a problem with</p> <p>16 the clerk on this. I was going to clarify that before we</p> <p>17 ended today, but this pleading is already in this court on</p> <p>18 file. It's called Defendant's Subsequent Addendum to</p> <p>19 Original and Second Petitions for a Formal Bill of</p> <p>20 Exception.</p> <p>21 Could I show this to Mr. Portnoy so he can</p> <p>22 refresh his memory off of his report?</p> <p>23 THE COURT: Let me see it first, please.</p> <p>24 Okay. This is in the court's file,</p> <p>25 file-marked August 1st of 2006, and it was a copy that</p> | <p>1 THE COURT: Overruled.</p> <p>2 A. I see that underlined, "his time is coming," and</p> <p>3 this is the first time I've looked at it. Apparently --</p> <p>4 it refers to Michael, so I'm going to presume that's</p> <p>5 Michael Furrh. But just looking at it the first time,</p> <p>6 I...</p> <p>7 BY MR. REGER:</p> <p>8 Q. In your opinion, from what you are reading right</p> <p>9 there, do you feel that is material to the testimony at</p> <p>10 trial that I testified that Matt called and threatened me</p> <p>11 on April the 2nd, 1995?</p> <p>12 MR. CONDER: Objection, relevance.</p> <p>13 THE COURT: Overruled.</p> <p>14 A. Well, I am thinking in terms of what the Court</p> <p>15 would have let me -- let in. And I don't know, if he</p> <p>16 threatened someone else on another occasion, if he would</p> <p>17 have allowed that threat against that other person to come</p> <p>18 in your trial. But I didn't have the opportunity to even</p> <p>19 know about it to make that decision at that time.</p> <p>20 BY MR. REGER:</p> <p>21 Q. Okay. As the record reflects during trial, I</p> <p>22 had testified that William Matthew Storey had called my</p> <p>23 home and threatened me and the State offered witnesses</p> <p>24 that said that Brittany Helen Storey had called Matthew</p> <p>25 Storey's house. That's what I was trying to establish as</p> |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

13 (Pages 37 to 40)

| Page 37 | Page 39 |
|---|--|
| <p>1 a part of my defense, the way I reacted was because he had 2 called my home. 3 If I had known about that, could you have 4 offered that as a propensity-type evidence? 5 MR. CONDER: Objection, speculation. 6 THE COURT: Overruled. 7 A. If I had known about it, I would have offered 8 it. I don't know the Judge would let it in. 9 BY MR. REGER: 10 Q. That's all I wanted to get at, sir. Thank you. 11 Did the State afford you with a true copy 12 of Arlington Police Report 940124913 that's also up 13 underneath that report you just reviewed there as 14 regarding the terroristic threats made by Matthew Storey 15 to Michael Furrh on July 24th of 1994, August 6th of 1994, 16 August 18th of 1994 and August 27th of 1994? 17 MR. CONDER: The State again objects on 18 relevance grounds since it doesn't involve the defendant. 19 Terroristic threats allegedly by the victim against a 20 third party are not relevant to whether the defendant was 21 the one who shot Matthew Storey on April 2nd, 1995. 22 THE COURT: Overruled. 23 A. I have not seen this report before. 24 BY MR. REGER: 25 Q. You have not seen that one either?</p> | <p>1 Q. You didn't? 2 A. To answer your question. What report are you 3 referring to now, please? 4 Q. The original one is the clerk's record at 72 -- 5 A. Seventy-two. 6 Q. The big clerk's file. 7 A. Yes. The stated date of offense on page 73 of 8 that file is August 28th. 9 Q. So within a matter of somewhere to 15 hours, do 10 you see that Matt had made good on his threats to Michael 11 Furrh? 12 A. The August 28th report refers to the altercation 13 in the parking lot -- 14 Q. Yes. 15 A. -- so it would be our argument that he made good 16 on the prior threats. 17 Q. So if you had known about those two reports, you 18 would have made that information available to my jury 19 showing his propensity -- 20 A. Yes. 21 Q. Do you feel that those reports, in your opinion, 22 corroborate my testimony in trial regarding Matthew 23 Storey's behavior? 24 A. Yes, I do, absolutely. 25 Q. Did the State afford you with a true copy of</p> |
| Page 38 | Page 40 |
| <p>1 A. No. 2 Q. Do you see the reporting officer stating in that 3 report that Matthew Storey had threatened his life on 4 numerous occasions? 5 MR. CONDER: Objection, hearsay. 6 THE COURT: Overruled. 7 A. That's what the report states, three dates. 8 BY MR. REGER: 9 Q. Was that material to my identity issue that I 10 offered in my trial, in your opinion? 11 A. Material? I would say it's material. 12 Q. Thank you, sir. Now, reflecting on that report 13 right there, Michael Furrh finally told the police about 14 those threats on August 27, 1994 at four in the morning, 15 did he not? 16 A. August 27th, four o'clock, Officer Shook was 17 dispatched to 3805 Ichabod Circle, Number 152, and 18 contacted Michael Furrh. 19 Q. Okay. And the reports that I mentioned to you 20 earlier, which were the DNA clerk's record 72 through 81, 21 that offense that occurred, the assault in Sleepy hollow 22 apartments, that happened on August 28th of 1994 at 12:30 23 in the morning. Did you recognize that time and date on 24 there when you were referring to it earlier? 25 A. No, I didn't.</p> | <p>1 Arlington Police Report 940140746 regarding Matthew 2 Storey's daytime damage to Michael Furrh's vehicle which 3 occurred on September 27th, 1994? 4 MR. CONDER: Objection, relevance. 5 THE COURT: Overruled. 6 A. What page would that be? 7 BY MR. REGER: 8 Q. That would be in that subsequent addendum that I 9 gave you towards the back. It's got a bunch of receipts. 10 A. What number, please? 59? 11 Q. Yes, I believe so. 12 A. I am looking at it. I don't recall -- I don't 13 recall seeing this report. 14 Q. Now, these reports that I've pointed out to you 15 that you referred to that you've never seen before, the 16 information that you -- I know you haven't been able to 17 thoroughly look at them, but from what you've seen from 18 the underlying offense, do you feel that it exhibits 19 Matthew Storey being an aggressor or an aggressive-type 20 person? 21 A. Most of them do. The last one refers to 22 Christina assaulted him. 23 Q. So you agree that he had an extensive history 24 that we weren't made aware of during my defense? 25 A. Yes. There is evidence that I was not made</p> |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

14 (Pages 41 to 44)

| Page 41 | Page 43 |
|--|---|
| <p>1 aware of and you were not made aware of.</p> <p>2 Q. Lastly, in that same pleading that you are</p> <p>3 looking at there, did the State afford you with a copy of</p> <p>4 Arlington Police Report 940146259 regarding the assault of</p> <p>5 William Matthew Storey and Christina Renae Ragland Storey?</p> <p>6 A. That was the last one I was referring to was</p> <p>7 259. If there is another one --</p> <p>8 MR. CONDER: State again objects to</p> <p>9 relevance at this time. An offense where the alleged</p> <p>10 victim was also a victim in another offense is not</p> <p>11 relevant.</p> <p>12 THE COURT: Overruled.</p> <p>13 A. Well, the testimony I gave on the last report,</p> <p>14 I'm not sure what report you were talking about. I was</p> <p>15 talking about number 59.</p> <p>16 BY MR. REGER:</p> <p>17 Q. Okay. The one with all of the automotive</p> <p>18 receipts is the one I was talking about last. It's got a</p> <p>19 narrative and automotive receipts. It's not been numbered</p> <p>20 yet in the record.</p> <p>21 A. There is an offense report 940140746.</p> <p>22 Q. That's the one I was talking about earlier.</p> <p>23 A. And it has some automotive receipts.</p> <p>24 Q. Do you see on there the narrative where the</p> <p>25 officer states that numerous witnesses saw William Matthew</p> | <p>1 BY MR. REGER:</p> <p>2 Q. As far as that report goes, that is in regards</p> <p>3 to what I had asked you earlier about if you had known</p> <p>4 whether or not Christina had pled guilty to that assault</p> <p>5 with bodily injury on March the 29th, 1995. And in that</p> <p>6 same report there she also states that she had been</p> <p>7 assaulted by Matthew Storey on that date.</p> <p>8 A. I frankly can't recall the admissibility of that</p> <p>9 issue, Christina assaulting Matthew. Sort of makes him</p> <p>10 look like a good guy.</p> <p>11 Q. Actually, the police officer, she testifies --</p> <p>12 MR. CONDER: Objection, hearsay.</p> <p>13 THE COURT: Overruled.</p> <p>14 BY MR. REGER:</p> <p>15 Q. She testifies in the police report on October</p> <p>16 8th, 1994, that she had also been assaulted October 5th of</p> <p>17 1995 and that's what the police had seen when they arrived</p> <p>18 at the scene, is they then seen her assault Matthew</p> <p>19 Storey, and that's the conviction that she pled guilty for</p> <p>20 later.</p> <p>21 A. If she testified on October 5th that Matthew</p> <p>22 assaulted her, that would have been more or less to our</p> <p>23 benefit. I'm not sure I would have wanted to impeach her</p> <p>24 but if, in our judgment, the impeaching of her outweighed</p> <p>25 -- if the pluses outweighed the minuses to impeach her,</p> |
| Page 42 | Page 44 |
| <p>1 Storey come to Michael Furrh's residence at that time and</p> <p>2 vandalize his car?</p> <p>3 A. Yes.</p> <p>4 Q. Would you have made that information known to my</p> <p>5 jury had you been afforded with it?</p> <p>6 A. I don't know that that is admissible. I would</p> <p>7 have certainly very seriously considered offering it in</p> <p>8 evidence through whatever witnesses I could.</p> <p>9 The fact that he vandalized a car on</p> <p>10 September 25th, 1994, if I had testimony to that effect,</p> <p>11 I would have certainly considered offering it.</p> <p>12 Q. Do you agree that it shows that William Matthew</p> <p>13 Storey traveled to Michael Furrh's location to deliver?</p> <p>14 A. Yes, I agree.</p> <p>15 Q. In regards to that last report that I asked you</p> <p>16 about, obviously you've already testified on the record</p> <p>17 that you have never seen it before.</p> <p>18 A. Right. I had never seen four six before.</p> <p>19 Q. That refers to the original report that I asked</p> <p>20 you about earlier, Christina Storey had pled guilty to</p> <p>21 that assault on March 29, 1995.</p> <p>22 MR. CONDER: State again objects to the</p> <p>23 relevance on Christina Storey's conviction.</p> <p>24 THE COURT: Overruled.</p> <p>25 A. And the question, please?</p> | <p>1 yes, I would have impeached her testimony through the</p> <p>2 evidence in this report. And I would have tried to do so</p> <p>3 through the testimony of Officer Rogers, who saw her, I</p> <p>4 guess, scratching him or hitting him or striking him,</p> <p>5 whatever is in the report.</p> <p>6 Q. That's all I have on that, sir.</p> <p>7 So after you've reviewed all of this</p> <p>8 evidence I've just shown you, do you still swear that the</p> <p>9 State fully complied with all of your discovery requests</p> <p>10 in this proceeding?</p> <p>11 A. No, I don't think they did.</p> <p>12 Q. Do you care to redact that part of that</p> <p>13 affidavit?</p> <p>14 A. I would say that there was sufficient -- there</p> <p>15 was considerable testimony or evidence that was not</p> <p>16 provided me in accordance with my motion. I remember when</p> <p>17 I copied the file, Mr. Rabalais handed me his full file,</p> <p>18 so that's what I remember about that.</p> <p>19 Q. There is considerable evidence going towards the</p> <p>20 identity factor of who acted as the aggressor and who</p> <p>21 acted as the defender that night that could have been</p> <p>22 presented to my jury?</p> <p>23 A. I'm not sure it's an identity factor. It's who</p> <p>24 was the aggressor and who was the assaultive person and</p> <p>25 whether or not you acted in self-defense.</p> |

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

15 (Pages 45 to 48)

| Page 45 | Page 47 |
|--|---|
| <p>1 Q. You do agree that self-defense is an identity 2 issue, do you not? 3 A. I've never thought of it, frankly, as an 4 identity issue. It's who assaulted who and who had a 5 right to use reasonable means of self-defense. 6 Q. And it's a legal form of innocence, the jury 7 would have found me -- 8 A. Self-defense is a legal defense. 9 Q. That's all I have. 10 MR. REGER: You've already ruled that I 11 can't go into anything on my void judgment issue? 12 THE COURT: Correct. 13 MR. REGER: So I can't ask him any 14 questions pertaining to anything on that matter? 15 THE COURT: Correct. 16 MR. REGER: That's all I have for this 17 witness. 18 CROSS-EXAMINATION 19 Q. Mr. Portnoy, I just have a few questions for 20 you. 21 A. Yes, sir. 22 Q. In this case, the defense was self-defense; is 23 that correct? 24 A. Yes. 25 Q. And you put on a self-defense case; is that</p> | <p>1 with me, Judge? 2 THE COURT: Yes. 3 You've got one more witness that you want 4 to call; is that right? 5 MR. REGER: Yes, ma'am. 6 THE COURT: Can we take about a five-minute 7 recess? 8 (Recess at 11:15 a.m.) 9 PAMELA KELLER HAND, 10 having been first duly sworn, testified as follows: 11 DIRECT EXAMINATION 12 BY MR. REGER: 13 Q. Did you bring a copy of an affidavit you 14 executed October 11, 2004? 15 A. I did. I don't have it with me up here. 16 MR. REGER: If I can have a moment, Your 17 Honor. 18 For the record, this affidavit is on file 19 in this cause at clerk's record 189 through 191. 20 BY MR. REGER: 21 Q. That affidavit is three pages in length that you 22 have? 23 A. Yes. 24 Q. Have you reviewed that affidavit in anticipation 25 of testifying here today?</p> |
| Page 46 | Page 48 |
| <p>1 correct? 2 A. Tried to. 3 Q. And you had an instruction in the jury charge on 4 self-defense; is that correct? 5 A. I believe the Judge gave me the instruction. 6 Frankly, I haven't read it lately and I have no 7 independent recollection, but I believe that he gave me 8 the instruction. The record speaks for itself. 9 Q. And in presenting the self-defense, did not the 10 defendant admit to shooting Mr. Storey? 11 A. Yes. 12 Q. This was always -- this case -- there was never 13 indication that some other person shot Mr. Storey? 14 A. No. 15 Q. This is simply a case of why this shooting 16 occurred rather than who was involved; is that correct? 17 A. Yes. 18 MR. CONDER: The State has no further 19 questions. 20 THE COURT: Redirect. 21 MR. REGER: I have no further questions, 22 Your Honor. 23 THE COURT: May this witness be excused? 24 MR. REGER: Yes. 25 THE WITNESS: May I take all of my file</p> | <p>1 A. I sure have. 2 Q. Do you recall that I instructed you to call 3 James S. Walker on the phone in April of 2002? 4 MR. CONDER: Objection. The Court's 5 already ruled it's not hearing this matter on the issue of 6 Judge Walker. 7 THE COURT: Sustained. 8 MR. REGER: That's all I have, Your Honor. 9 That's all I had this witness for. 10 THE COURT: Her affidavit is already 11 included in the clerk's record. 12 MR. REGER: I'm wanting to prove it up for 13 the Second Court of Appeals for review when I do my 14 appellate brief. That's what my whole intention was. 15 THE COURT: Do you want her to identify it 16 for the record? 17 MR. REGER: Yes, ma'am, that would probably 18 be easier. 19 Can I show her this record? 20 THE COURT: Yes. 21 A. Yes, this is my affidavit. 22 BY MR. REGER: 23 Q. That's your signature? 24 A. Sure is. 25 Q. Notary, everything is an exact same copy that</p> |

Page 49

1 you made?
2 A. Yes.
3 Q. Everything you stated there true and correct
4 still today?
5 A. Of course, it is.
6 MR. REGER: That's all I have, Your Honor.
7
8 MR. CONDER: No questions, Your Honor.
9 THE COURT: All right. If you will take
10 off that microphone, you can step down.
11 Is it okay if she stays in the courtroom?
12 MR. CONDER: Yes, Your Honor, the State
13 doesn't have any objection to that.
14 THE COURT: Go ahead, Mr. Reger.
15 MR. REGER: Can I go ahead and comment on
16 the State's reply and on my motion for new trial?
17 THE COURT: For argument purposes?
18 MR. REGER: Yes.
19 THE COURT: Does the State have any
20 evidence to present?
21 MR. CONDER: No, Your Honor, the State has
22 no evidence to present.
23 THE COURT: Go ahead.
24 MR. REGER: In the State's July 27th
25 reply to my motion for new trial they contended since I

Page 50

1 admitted to shooting William Matthew Storey in
2 self-defense that identity was not or is not an issue in
3 this case. The State cited case law in support in that
4 reply. However, it fails for a number of reasons.
5 First off, the Hurd versus State case they
6 cited to, which I have that right here, it's an
7 unpublished opinion, and Roughley versus State citations,
8 I would like to point out on record that neither of these
9 cases have any precedential value under Texas rules
10 unpublished cases.
11 Second, the Hurd versus State case dealt
12 with a completely different set of circumstantial facts
13 that are distinguishable from my case, specifically, that
14 the shooting of a police officer occurred in a confined
15 room in which Mr. Hurd admitted to firing his weapon but
16 then claimed to not have known who he was shooting, nor
17 that it was a police officer.
18 In my case, William Matthew Storey called
19 my home and threatened myself and came over to make good
20 on his threats. There was no question about who I was
21 defending myself against.
22 Third Roughley, the Roughley versus State
23 case also dealt with a completely different set of
24 circumstantial facts that are distinguishable from my
25 case, specifically the stabbing of a man that was already

Page 51

1 with Mr. Roughley. In Mr. Roughley's case the record is
2 devoid of any other facts whether or not there had been
3 bad blood between the two before the altercation, nor how
4 it was that they'd come together, nor even what and if and
5 how the use of a knife was called in the altercation. The
6 record also does not reveal whether or not Mr. Roughley
7 knew of the deceased's past nor if it was one filled with
8 an aggressive, assaultive and hostile history like I knew
9 Matthew Storey's to be in my case.
10 Fourth, the Hurd and Roughley decisions are
11 out of the Fifth District Court of Appeals in Dallas, not
12 our of our Second Court of Appeals here in Fort Worth.
13 Fifth, each and every one of the State's
14 case citations in its reply are all based upon pre-2003
15 amended Chapter 64 statutory law and case law. My case
16 law falls under the post-2003 amended Chapter 64 Statutory
17 law and case law.
18 The State's reply also incorrectly asserts
19 that "while whether the defendant acted in self-defense
20 was a question for the jury, there was no question that
21 the defendant fired the murder weapon." That is at
22 Section VI of the reply.
23 I contend that in Texas a finding of not
24 guilty by reason of self-defense is a legal finding of
25 innocence. It's called justified homicide.

Page 52

1 While it may have once been a question for
2 my illegal jury to decide, it is now a question for this
3 Court involving my identity because self-defense requires
4 an aggressor and it requires a defender.
5 Under Texas Code of Criminal Procedure
6 Article 64.03(a)(1)(B), this Court is endowed with
7 jurisdiction to consider all evidence surrounding my legal
8 innocence claim of self-defense. Nothing in the Statute
9 under Chapter 64, nothing in the case law under Chapter 64
10 prohibits such.
11 This is an issue cognizable under the
12 holdings in Schlue v. Delos, which is Supreme Court 115 at
13 851 regarding factual/procedural innocence claims tied to
14 constitution errors at my trial.
15 At trial the State offered Christina Renae
16 Ragland Storey as their primary witness that I was
17 allegedly the aggressor on April 2nd of 1995 and that I
18 allegedly executed Matt Storey in cold blood. And that's
19 on the record, Reporter's Record, Volume 4, pages 202
20 through 209; Volume 5, pages 213 through 226.
21 I testified then and still to this very day
22 contend that Matthew Storey was the aggressor on the
23 evening of April 2nd, 1995, when he called myself on the
24 phone, threatened myself on that phone, came over looking
25 for myself, fought myself for control of my weapon and

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

17 (Pages 53 to 56)

| Page 53 | Page 55 |
|---|---|
| <p>1 died as a result of my justified use of deadly force. I</p> <p>2 testified to that in the Reporter's Record, Volume 5,</p> <p>3 pages 354 through 375, and 397 through 421.</p> <p>4 This dispute is a clear issue of identity.</p> <p>5 This identity issue also revolves around credibility</p> <p>6 factors that were not made available to my original</p> <p>7 illegal jury, as you heard Mr. Portnoy testify to, ma'am.</p> <p>8 This Honorable Court now has access to this</p> <p>9 newly-discovered evidence and has jurisdiction to consider</p> <p>10 those issues when deciding the identity of whom acted as</p> <p>11 the aggressor in this case and whom acted as the</p> <p>12 defendant. If this Court refuses to address this identity</p> <p>13 issue on the State's incorrect theory that Article</p> <p>14 64.03(a)(1)(B) does not allow for such a consideration,</p> <p>15 then I will have to object to Article 64.03(a)(1)(B) being</p> <p>16 unconstitutional both factually and facially, as well as</p> <p>17 object to my due process and equal protection rights under</p> <p>18 the law being violated.</p> <p>19 May this Court also take judicial notice of</p> <p>20 the fact that Black's Law Dictionary defines the word</p> <p>21 "identity" to mean, "the authenticity of a person or</p> <p>22 thing," and that is in the Eighth Edition at page 761.</p> <p>23 Texas Code of Criminal Procedure, Article</p> <p>24 64.03(a)(1)(B) simply requires that identity was or is an</p> <p>25 issue in this case. Texas law makers did not intend for</p> | <p>1 believe it is Bleil, in the United States district</p> <p>2 courthouse down the street, that he on this issue wrote in</p> <p>3 my federal habeas proceeding, in short, that the women,</p> <p>4 however, generally dismissed Storey's aggressive episodes</p> <p>5 as either being playful or unintended -- if you would like</p> <p>6 to look at this, Your Honor, for your consideration. I</p> <p>7 bracketed those parts on page 8.</p> <p>8 There is no doubt that my original jury</p> <p>9 came to that same conclusion Magistrate Judge Bleil did.</p> <p>10 My newly discovered evidence is being proffered to point</p> <p>11 out identity evidence of Matt Storey's propensity to</p> <p>12 become extremely hostile, violent and assaultive when he</p> <p>13 became intoxicated.</p> <p>14 This is the very same evidence which was</p> <p>15 just found to be material in a friend of mine's case which</p> <p>16 is cited at Smith versus Dretke, 417 F.3d at page 428</p> <p>17 granted his Federal habeas writ.</p> <p>18 Chapter 64 does not does not forbid such an</p> <p>19 identity showing or credibility impeachment. As a matter</p> <p>20 of fact, Wolfe versus State from the Texas Court of</p> <p>21 Criminal Appeals noted that the legislation has broadened</p> <p>22 the scope of Chapter 64 in its 2003 amendment to now</p> <p>23 include appeals under Article 64.05 that were not</p> <p>24 previously permitted, and that's at 120 SW3d, page 372,</p> <p>25 footnote five.</p> |
| Page 54 | Page 56 |
| <p>1 that phrase to only mean identity of the accused or</p> <p>2 perpetrator was the issue.</p> <p>3 The State, however, wishes to twist the</p> <p>4 statute to only mean such when it simply does not.</p> <p>5 Self-defense is an identity issue because it is a form of</p> <p>6 legal innocence not forbidden under Chapter 64.</p> <p>7 Also in regards to the identity issue, my</p> <p>8 newly-discovered evidence now on file goes to show that</p> <p>9 Christina Storey and Vicki Storey were not and still not</p> <p>10 credible witnesses in this case.</p> <p>11 In this case Christina Storey's credibility</p> <p>12 was impeached three times over, a fact that was</p> <p>13 conveniently withheld from my jury's consideration.</p> <p>14 The record clearly establishes that</p> <p>15 Christina and Vicki both had no problem or fear of lying</p> <p>16 on that witness stand right there, Your Honor. Those</p> <p>17 factors fall under the issue of identity because</p> <p>18 95 percent of the State's case was based upon their word</p> <p>19 alone that I allegedly acted as the aggressor and while</p> <p>20 downplaying my accounts of Matt Storey's hostile,</p> <p>21 intoxicated and assaultive past.</p> <p>22 This is where I brought into play earlier</p> <p>23 about how did a disinterested jurist view Christina's and</p> <p>24 Vicki's downplaying of the testimony, and that's where I</p> <p>25 brought the accounts of Magistrate Judge Charles -- I</p> | <p>1 My case follows under the less stringent</p> <p>2 post-2003 amendment under Chapter 64 law and the new</p> <p>3 holdings of Smith versus State, 165 SW3d at 361.</p> <p>4 My plea of not guilty by reason of</p> <p>5 self-defense or justified legal innocence is an identity</p> <p>6 issue being equivalent to an assertion that there is at</p> <p>7 least a 51 percent chance that I would not have been</p> <p>8 convicted of the offense of first-degree murder in this</p> <p>9 case.</p> <p>10 The forensic evidence within this case does</p> <p>11 not remotely match the testimony of Christina Storey; for</p> <p>12 example, the blood evidence. The record shows that the</p> <p>13 State shied away from this evidence with Lieutenant Jerry</p> <p>14 Vennum forgetting to bring 14 photographs showing spatter</p> <p>15 on the car driven by Christina Storey that night.</p> <p>16 The location of that blood within this</p> <p>17 case, when you look at it on those photographs, it opens</p> <p>18 many new, unanswered questions that arise about</p> <p>19 Christina's versions of events. For example, if I were to</p> <p>20 have shot Matthew Storey over the top of the car and again</p> <p>21 as he was on the ground and as I was allegedly standing</p> <p>22 over him, as Christina testified to at Reporter's Record</p> <p>23 Volume 4, pages 203 to 207, how did I become covered in</p> <p>24 blood? Whose blood is it?</p> <p>25 Pamela Hand testified on the record that</p> |

Page 57

1 she saw blood smeared on some of the walls within my
2 townhome shortly after the events of April 2nd, 1995,
3 and that's at Reporter's Record Volume 5, pages 308
4 through 309, and was also offered in my Defense Exhibit 3.

5 Terry Hand saw blood within my townhome
6 also shortly after these events, specifically on the
7 stairwell casing and on myself and my on son's clothing,
8 and that's at Reporter's Record Volume 5, pages 295
9 through 296, and also shown in Defense Exhibits 3, 4 and
10 5.

11 Vicki Storey also saw myself covered in
12 blood and there was blood on my son's clothing, which is
13 in Reporter's Record Volume 4, pages 125 through 126.

14 Even when I was later arrested, hours
15 later, Sergeant Ben Bruce noted in his report that I had
16 blood on my hands, arms, chest and blue jean shorts. If
17 you would like to look at the underlining on this, too,
18 ma'am?

19 THE COURT: It's okay. I believe you.

20 MR. REGER: The State still possesses those
21 shorts and my son's clothing, but whose blood is on them?
22 That's the question. If we are to continue believe in
23 Christina Storey. How did it get there? Let this Court
24 take judicial notice that I testified on record that after
25 Matthew Storey struggled myself for my weapon and was shot

Page 58

1 that he then fell on top of myself, and that's at
2 Reporter's Record Volume 5, pages 366, 397, 398, 399
3 through 403 and page 417.

4 And what about the forensic autopsy
5 testimony from Dr. Marc Andrew Krouse at Reporter's Record
6 Volume 4, pages 175 through 176, which also corroborated
7 my testimony that Matthew Storey fell on top of me, that I
8 slid out from under him shooting awkwardly with the rifle
9 barrel eight to 10 inches off the ground shooting
10 horizontally?

11 These are just some of the many unanswered
12 questions regarding identity that I seek answers upon,
13 something that the Texas Legislature enacted Chapter 64 to
14 now allow. I am merely seeking to establish the truth and
15 thus prove my legal innocence by a preponderance of the
16 evidence, which I have more than sufficiently proven in
17 this case. This finding of the truth should be the
18 State's primary concern and duty to the public, as well.

19 I can't talk about the void punishment
20 stuff.

21 Going into my other issue in the motion for
22 new trial in regards to judicial notice, I filed evidence
23 into this DNA record which is not subject to reasonable
24 dispute that it is generally known within the territorial
25 jurisdiction of this Court and is capable of accurate and

Page 59

1 ready determination by resorting to the State's resources
2 whose accuracy cannot reasonably be questioned.

3 I requested this Court to take judicial
4 notice of these adjudicated facts and records numerous
5 times, and once again request this Court to take judicial
6 notice of same. The record exposes the prima facie case
7 that identity of the aggressor was and still is an issue
8 within this case.

9 The record also exposes prima facie facts
10 that Christina Storey is less than credible. She is
11 impeached, in fact, and that newly discovered identity
12 testimony exhibiting Matthew Storey to have been the
13 intoxicated, hostile, assaultive individual that compelled
14 me by valid threat to act in a manner in which I did on
15 April 2nd 1995.

16 These critically material identity issues
17 were never revealed to my jury, but this Court can easily
18 see what the results would have been if they had been
19 exposed to such.

20 The record also exposed -- well, that's
21 going into the void judgment -- strike that.

22 Thus, I am asking the Court to take
23 judicial notice of these undisputed facts that I pointed
24 out in the established record today. Plus I would ask the
25 Court to take judicial notice of the fact that Mr. Portnoy

Page 60

1 testified that he had never seen that material evidence
2 before, ma'am.

3 Somehow, the State also believes that I
4 should be raising these matters on newly-discovered
5 evidence and the illegal, null and void judgment within a
6 subsequent habeas writ. Despite knowing that the high
7 courts repeatedly complain about state judicial resources
8 being used for matters that could have been resolved in
9 the lower courts.

10 The State also knows I've also filed a
11 habeas writ in this case once before. Mr. Conder knows
12 that surely as there is a God in heaven that if and when I
13 were to file a subsequent writ that he'd most swiftly and
14 zealously pen a Section 4 abuse of writ response, and also
15 pen the findings of fact, conclusions of law and
16 recommendations of this Court that the writ be dismissed
17 under Section 4.

18 After this Court signed off on those
19 findings the record will be sent to the Court of Criminal
20 Appeals, which would in turn issue its infamous white
21 penny postcard order dismissing the writ under Section 4,
22 Article 11.07.

23 I've not only witnessed these events occur
24 many times over the years representing other inmates but
25 personally dealt with a case with Mr. Conder, Jeffery Lynn

STATE V. RUSSELL JAY REGER
VOLUME 1 OF 1 VOLUME

19 (Pages 61 to 64)

| Page 61 | Page 63 |
|---|--|
| <p>1 Poteete's case number 0551025D in the 371st in Court of 2 Criminal Appeals writ number WR-40, 174-02 involving 3 newly-discovered material, internal affairs photographs 4 suppressed by the State and the police therein. No 5 request for an affidavit from Mr. Poteete's attorney was 6 ever requested, nothing. He was just railroaded off to 7 the Court of Criminal Appeals within two weeks. 8 If I am forced to waste scarce judicial 9 resources to get these matters addressed in that manner, I 10 will then and only then file a subsequent writ into this 11 court. However, my issues once again fall up under the 12 purview of this Court under the jurisdiction vested in 13 Chapter 64, and an appeal is cognizable under Article 14 64.05. 15 It should be remembered that in the event 16 this Court were to grant this motion for new trial and 17 thereafter order DNA testing, I'd still be required to 18 file an 11.070 writ to get relief in that. And the case 19 that cites that procedure is Ard versus State, 191 Sw3d at 20 342. 21 With this said, standing on the entire null 22 and void record to cause number 0579930D, I would 23 respectfully pray this Court to grant this motion for new 24 trial with objections. A fundamental miscarriage of 25 justice has now been made known to this Court, and I so</p> | <p>1 not an issue when the defendant admits the offense or in 2 consent cases. Again, the this question of consent, could 3 it have been valid legal justification for committing the 4 offense. But whether it occurred or not, identity is not 5 an issue. Again, the issue why, versus whether this was 6 the person who did it. 7 Mr. Portnoy on the stand today in fact also 8 agreed with that point that self-defense is not an 9 identity issue. Self-defense goes generally, as I said, 10 back to why somebody committed the offense, not whether 11 the offense was committed. 12 In this case there was no evidence that 13 anyone other than the defendant shot Matthew Storey. The 14 defendant in this case has raised numerous allegations of 15 newly-discovered evidence and questions regarding the 16 credibility of state's witnesses. Again, the case law is 17 clear that actual innocence claims based upon 18 newly-discovered evidence and also misconduct and 19 ineffective assistance of counsel must be raised by 20 Article 11.07, and this Court does not have jurisdiction 21 to consider it under a 64.03 motion. 22 Again, habeas corpus case, that is the 23 avenue he must take in order to overcome the burdens that 24 come under 11.07. 25 Article 64 requests for most convictions --</p> |
| Page 62 | Page 64 |
| <p>1 pray for relief. That's all. 2 MR. CONDER: May it please the Court, I 3 will be very brief. 4 The Texas Legislature established Article 5 64 and in doing so they set out five specific standards 6 you had to meet, and one we are discussing was an identity 7 issue in the case. The statute has been modified since 8 the original issuance in 2001, but the 2003 modifications 9 have nothing to do with the identity issue. That language 10 was not changed. 11 Primarily the changes in 2003 were simply 12 to allow the State to now appeal from a decision on a DNA 13 request, and it did some changing on the exoneration under 14 64.03 (a) (2) (A). The case law that has interpreted 64 15 said that when the defendant claims self-defense that 16 identity is not an issue. When they look at identity they 17 are looking at is there a question of whether this was the 18 person who did it, not the motivation behind it, not 19 whether there is some sort of legal excuse or 20 justification for it. The case law did not -- the 21 enactment of 64 did not allow them to open a broad base on 22 a writ of habeas corpus, such as newly-discovered evidence 23 claims. 24 If you look at some of the other cases 25 besides self-defense cases, they interpreted identity is</p> | <p>1 that testing is not broad as to incorporate all of the 2 other issues he has raised today. It simply does not meet 3 the standards of 64.03, and because he raised self-defense 4 and admitted the offense does not support his position in 5 this case. So this Court was correct in earlier denying 6 his request for postconviction DNA testing. 7 That's it from the State. 8 THE COURT: Okay. Upon hearing the 9 evidence presented, the case law and the arguments of 10 counsel, as well as Mr. Reger proceeding pro se, the Court 11 will hereby overrule Mr. Reger's motion for new trial and 12 allow my original ruling denying DNA testing under Article 13 64.03 to stand. 14 Either side request that I enter a written 15 order to that effect? 16 MR. REGER: Yes, ma'am. 17 THE COURT: Okay. I will prepare a written 18 order and file that, and that will conclude our 19 proceedings for today. 20 Mr. Reger, I will go ahead and tell the 21 clerk that they can send you back. Did you have something 22 else? 23 MR. REGER: Yes. Upon the supplemental 24 record I had some further requests. I already have copies 25 of them if I can get them filed into the record. There</p> |

Page 65

1 was a problem with two pages being left out of the
2 original motion for new trial that I wanted to show the
3 clerk where they are at and which ones they are, because
4 I've been asking for them to get them included back into
5 it.

6 THE COURT: Make copies and make sure they
7 get included in the supplemental record.

8 MR. REGER: I have this additional request.

9 THE COURT: What is that?

10 MR. REGER: For the supplemental record, I
11 am asking for the additional request to be put into it. I
12 have a copy for the State.

13 THE COURT: We will file that as well then.

14 Is there anything else we need to do on the
15 record?

16 MR. REGER: That's it.

17 THE COURT: Okay. Thank you all.

18 (Proceedings adjourned)

19

20

21

22

23

24

25

1 STATE OF TEXAS

2 COUNTY OF TARRANT

3 I, Judy D. Miller, Official Court Reporter in and
4 for the Criminal District Court No. 3 of Texas in and for
5 Tarrant County, do hereby certify that the above and
6 foregoing contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in this
9 volume of the Reporter's Record in the above-styled and
10 numbered cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that this Reporter's Record of
13 the proceedings truly and correctly reflects the exhibits,
14 if any, offered by the respective parties, if requested.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is reflected in the
17 original copy of this volume and was paid/will be paid by
18 Tarrant County.

19 WITNESS MY OFFICIAL HAND, on this the 29th day of
20 August, 2006.

COPY

21

22 Judy D. Miller, CSR
23 Texas CSR No. 191, Exp: 12/31/06
24 Official Court Reporter
25 Criminal District Court No. 3
401 W. Belknap, 7th Floor
Fort Worth, Texas 76196
Telephone: (817)884-1359
email: jmillertarrantcounty.com